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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,689	02/20/2001	Luther E. Lindler		

7590 03/25/2003
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EXAMINER

GUCKER, STEPHEN

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/285,689

Applicant(s)

Lindler et al.

Examiner

Stephen Buckner

Group Art Unit

1647

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/22/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-10 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-10 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-6 and 9, drawn to a protein, classified in class 530, subclass 403, for example.

Group II. Claims 7-8, drawn to an antibody, classified in class 530, subclass 388.4, for example.

Group III. Claim 10, drawn to a method of raising antibodies, classified in class 424, subclass 190.1, for example.

2. Although there are no provisions under the section for "Relationship of Inventions" in MPEP 806.05 for "inventive groups that are directed to different products; restriction is deemed to be proper because these products appear to constitute patentably distinct inventions for the following reasons:

Groups I-II are directed to products that are distinct physically, structurally, and functionally, and are therefore patentably distinct, each group from the other. The protein has a sequence and structure that is completely different and distinct from an antibody which binds to it, and neither the protein or antibody share significant sequence identity in regards to their primary structures. Each can be separately isolated from their natural sources and patented as separate inventions.

Art Unit: 1647

3. Groups I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the protein of Group I can be used to detect antisera possessing antibodies against many *Brucella* species arising from infection.
4. Groups III and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the antibody of Group II can be made by using the attenuated organism or a membrane preparation from the organism.
5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their separate classifications and because the literature searches required for the inventions are not co-extensive and therefore references that would anticipate one invention would not necessarily anticipate or even make obvious the other invention, a search burden exists, and restriction for examination purposes as indicated is proper. Furthermore, there are different issues for the search and examination of each, which would also be unduly burdensome.

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6. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (703) 308-6571. The examiner can normally be reached on Monday to Friday from 0930 to 1800. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623. The fax phone number for this Group is currently (703) 308-4242, but Applicant should confirm this by phoning the Examiner before faxing.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

SG

Stephen Gucker

March 24, 2003

Gary L. Kunz
GARY KUNZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600